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May 20, 2019

Ms. Debra A. Howland
Executive Director
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, New Hampshire 03301

Re: Docket No. DG 17-152
Energy North Natural Gas Corp. d/b/a Liberty Utilities
2017 Least Cost Integrated Resource Plan
Pending Motions

Dear Ms. Howland:

Please treat this letter as the response of the Office of the Consumer Advocate (OCA), on behalf of the residential customers of the above-referenced utility, to the motions that were filed in this docket on May 10, 2019 by intervenors Conservation Law Foundation (CLF) and Terry Clark. Although the motions were filed separately, they address the same issue: whether Energy North Natural Gas Corp. d/b/a Liberty Utilities (Liberty) has failed to meet its RSA 378:38 obligations, first when it filed the Least Cost Integrated Resource Plan (LCIRP) that is the subject of this docket on October 2, 2017 and, more recently, when Liberty filed certain supplementary materials on April 30, 2019 as directed by the Commission in Order No. 26,225 (March 13, 2019).

The filing and approval of LCIRPs are always consequential acts in light of RSA 378:40, which explicitly ties future rate increases to the existence of an approved LCIRP. However, in this instance, the pending Liberty LCIRP is of special significance because of the pendency of a parallel proceeding, DG 17-198, in which Liberty is seeking pre-construction approval of its Granite Bridge pipeline and liquefied natural gas storage tank proposal (along with certain wholesale supply agreements) that would add upwards of \$400 million to rate base. Central to Liberty's case in DG 17-198 is the contention that the project is consistent with, and justified by, the LCIRP pending in DG 17-152.

The CLF and Clark motions make essentially the same request of the Commission: that it take action now to declare Liberty's filings insufficient on the ground that Liberty has failed to address, or has addressed in cursory fashion, certain specific LCIRP requirements: the inclusion

of assessment of “plan integration and impact on state compliance with the Clean Air Act of 1990, as amended, and other environmental laws that may impact a utility’s assets or customers,” RSA 378:38, V; an assessment of “the plan’s long- and short-term environmental economic, asnd energy price and supply impact on the state,” *id.* at VI, and an assessment of “plan integration and consistency with the state’s energy strategy under RSA 4-E:1,” *id.* at VII.

The relief requested by the movants is precluded by the Commission’s determination in Order No. 26,225. The Commission issued that order in response to a previous motion of Mr. Clark to dismiss the proceeding and order a moratorium on any expansion and investment plans described in the LCIRP including, obviously, the Granite Bridge project. Although the Commission agreed that the LCIRP as filed was deficient, the Commission ordered Liberty to make a corrective supplementary filing and explicitly declined to grant the relief requested by Mr. Clark. The Commission ruled that the deficiencies alleged by Mr. Clark are “factors to be considered” at and after hearing, advising that “[a]ny party may assert arguments concerning dismissal or denial at the end of the proceeding after the record has been closed, if the facts warrant such action.” Order No. 26,225 at 6.

Nevertheless, the concerns raised in the CLF and Clark motions are anything but trivial.

At the highest level, the essence of the CLF and Clark arguments is that Liberty is ignoring the issue of climate change as it seeks to expand its footprint, its customer base, its sales, and its rate base, and as the Company discharges its obligations to conduct least-cost integrated resource planning under RSA 378:37 *et seq.* The OCA takes no position on this question, not because we are indifferent to the effects of climate change but because our statutory mandate requires us to focus on ratepayers and rate impacts rather than on environmental impacts.

In that regard, the OCA has long been concerned about the extent to which essentially all electric and natural gas utilities have been complying with their LCIRP obligations. The Commission has encouraged the utilities to focus on *how* they plan rather than on *what* they plan, even though RSA 378:39 instructs the Commission to focus its review on “potential environmental, economic, and health-related impacts of each proposed *option*” (emphasis added). The reference to the impacts of proposed options clearly contemplates that the Commission will consider the impacts of specific investment decisions in the course of reviewing an LCIRP.

Nevertheless, the Liberty LCIRP as originally filed is very much a disquisition on *how* the utility reached the conclusion that a new pipeline along the Route 101 corridor, a 2 billion cubic foot liquefied natural gas storage tank in Epping, and wholesale contracts making use of those facilities are the only plausible strategic course for this utility. Liberty essentially ignored the directives for supply options assessment in RSA 378:38 – and Mr. Clark sounded the initial alarm with respect to some of these deficiencies. He did not pinpoint all of them, nor did CLF. For example, the cursory references in the LCIRP to the outcomes of Commission energy efficiency proceedings (which focus on the use of ratepayer funds to meet the Commission-approved Energy Efficiency Resource Standard, EERS) do not even begin to assess the extent to which *all* available energy efficiency options (including those that might go beyond those funded via the EERS mechanism) could be least-cost within the meaning of the least cost integrated resource planning rubric. *Cf. Consolidated Edison Co. of New York* (N.Y. Public Serv. Comm’n,

Case 17-G-0606), orders of Feb. 7, 2019 (approving non-pipelines solutions portfolio); Aug. 9, 2018 (approving gas demand response pilot); and July 12, 2018 (approving Smart Solutions Program to address forecasted growing shortfall of peak day pipeline capacity).

The OCA agrees with CLF and Mr. Clark that the supplemental testimony of Liberty witness William Killeen as filed on April 30 is almost shocking in its cursory treatment of the issues identified in Order 26,225 as requiring further elaboration. The Commission instructed Liberty to “address each of the specific elements required under RSA 378:38 and RSA 378:39 that are not already addressed in its LCIRP, with adequate sufficiency to permit the Commission’s assessment of potential environmental, economic, and health-related impacts of each option proposed in the LCIRP.” Order No. 26,225 at 7. In response, Mr. Killeen simply and briefly compared each of two distribution options and each of three wholesale supply options *to each other* and concluded that Liberty had made appropriate choices. April 30, 2019 Testimony of William R. Killeen at 11-12.

This defies the whole notion of least-cost integrated resource planning. From the perspective of the OCA, Liberty’s position is deeply troubling not because it is inimical to the public policy of this state to increase New Hampshire’s reliance on natural gas (an argument we leave to others) but because that public policy, as codified in RSA 378:37, requires utilities to promote health and safety, to meet the energy needs of citizens and businesses, to provide for reliability and energy diversity, to maximize the cost-effective use of demand-side resources, and to do these things “*at the lowest reasonable cost*” (emphasis added). This LCIRP begs every question relevant to RSA 378:37 and RSA 378:39 by assuming that the only answers worth analyzing and comparing are the two distribution options and three wholesale supply options Mr. Killeen discussed in his April 30 filing.

Although the law of the case in this proceeding almost certainly precludes the granting of the relief requested in the CLF and Clark motions, Liberty should consider whether it would be a prudent use of all parties’ resources (and those of the Commission) for the utility to go back to the LCIRP drawing board. Given the current state of this proceeding, there is a significant risk that the Commission will, after the extensive litigation contemplated by the procedural schedules in both dockets through the end of 2019, be compelled to reject the current edition of the LCIRP and thus decline to approve the Granite Bridge project.

Thank you for considering our position on the pending motions. Please feel free to contact me if there are any questions or concerns.

Sincerely,



D. Maurice Kreis
Consumer Advocate

cc: Service List (via e-mail)